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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1952.

No. 517.

OLIVE B. BARROWS, RICHARD PIKAAR and M. M. O'GARA,
Petitioners,

vs.

LEOLA JACKSON,
Respondent.

On Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California.

BRIEF

Of O'Fallon Park Protective Association, Council for Community Preservation, Chouteau-Lindell Improvement Association, West Walnut Manor Association, Northwest Business Men's Association, Northwest Improvement Association, North St. Louis Business Men's Association, Raymond Place Good Neighborhood Association, Kingshighway-Union Improvement Association, North Pointe Improvement Association, Walnut Park Protective Association, St. Louis Property Owners Association of America, Inc., Marcus Avenue Improvement Association, Northwest St. Louis Improvement and Protective Association, Mark Twain Improvement Association and Hamilton Place Association as Amici Curiae.

WALTER H. POLLMANN,
GERALD L. SEEGERS,
706 Chestnut Street,
St. Louis 1, Missouri,
Attorneys for the Amici Curiae.

PAUL M. GERWITZ, JR.,
CHARLES A. LEE, JR.,
706 Chestnut Street,
St. Louis 1, Missouri,
Of Counsel.

St. Louis Law Printing Co., 415 North Eighth Street, CEntr. 1-[illegible]

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On Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California.

BRIEF OF AMICI CURIAE.

The following organizations who were and are interested in this Court's decision in Shelley v. Kraemer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, and in the attempt being made in this case to convince this Court that it should expand its decision in the Shelley case to cover the present situation, have by consent of all parties and under rule 27 (9) (a), of the revised rules of the Supreme Court of the United States, filed this brief in an effort to reverse the decision of the court below. The organizations that join in this brief are as follows:

O'Fallon Park Protective Association
Council For Community Preservation
Chouteau-Lindell Improvement Association
West Walnut Manor Association

Northwest Business Men's Association
Northwest Improvement Association
North St. Louis Business Men's Association
Raymond Place Good Neighborhood Association
Kingshighway-Union Improvement Association
North Pointe Improvement Association
Walnut Park Protective Association
St. Louis Property Owners Association of America, Inc.
Marcus Avenue Improvement Association
Northwest St. Louis Improvement and Protective Association
Mark Twain Improvement Association
Hamilton Place Association

STATEMENT OF INTEREST OF AMICI CURIAE.

These amici curiae are organizations of home owners and small property owners in Missouri. Their members own several thousand homes which are protected by private contracts from monetary loss as real as loss by fire which inevitably results from the use and occupancy of a neighboring house by non-Caucasians. These valid contracts do not prevent the use and occupancy any more than fire insurance prevents fire but the loss is prevented in the same way. Their members have property rights in these private contracts the same as they have in their contracts of fire insurance which are endangered by the decision of the District Court of Appeal of the State of California, Second Appellate District, in the above case, Barrows v. Jackson (1952), 112 A. C. A. 613, 247 P. 2d 99.

STATEMENT OF FACTS.

To conserve the time of this Court, these amici curiae adopt the statement of facts set forth in petitioner's petition for certiorari and incorporate the same herein by reference.

JURISDICTIONAL STATEMENT.

Since the District Court of Appeal, Second Appellate District, of the State of California, held (112 A. C. A. 613, 247 P. 2d 99) that it would have granted the money judgment prayed for by petitioners except for what the District Court thought to be the insurmountable barrier of this Court's opinion in Shelley v. Kraemer (R. 34), it seems clear that there is no adequate State ground upon which the judgment of the District Court of Appeal can be predicated. Petitioners and these amici feel that the California State Courts have decided a Federal question of substance in a way "probably not in accord with the applicable decisions of this Court." Jurisdiction is here under 28 U. S. C. A. 1257 (3), and Rule 38, 5a, of this Court.

THE QUESTIONS PRESENTED.

The general question presented here is whether under the threatened money judgment of the District Court of Appeal of California against her for breach of the restrictive agreement, respondent would be deprived of liberty or property as forbidden by the Fourteenth Amendment. The specific question presented is whether this Court is prepared to expand its decision in Shelley v. Kraemer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A. L. R. 2d 441, to cover this case.

SUMMARY OF THE ARGUMENT.

I.

The equal protection clause of the Fourteenth Amendment is not involved in this case because respondent is sought to be held liable in the State courts of California, not because of her race or color, but because she violated her express agreement to the damage of petitioners.

II.

Respondent has no standing in this court to claim that the threatened State judicial action of California is unconstitutional as to the negro occupants of the real property involved if no personal right of respondent herself is in jeopardy.

III.

Respondent would not be deprived of liberty or property without due process of law by a California money judgment rendered against her, in that respondent was not forced by California State power to sign the restrictive agreement. Respondent had the opportunity, by refusing to sign the agreement, to control her own property. The element of control of property, if taken away from the owner on arbitrary grounds by state legislative or judicial action, entitles the owner to complain of deprivation of property without due process, but here respondent consented to the arrangement of which she now complains.

IV.

Having accepted the benefit and aided in the procuring of the agreement which is the subject of the action in

the State Courts, respondent is now estopped to claim that enforcement of the agreement in the California State Courts would violate her personal rights.

V.

This court has no jurisdiction to decide for the State of California what its internal public policy should be, nor may this Court question the fact that petitioners have been materially damaged by respondent's breach of contract.

ARGUMENT.

I.

Respondent Cannot in This Court Rely on the Equal Protection Clause of the Fourteenth Amendment.

Since the highest California Court from which a decision could be had has indicated that it would enforce the agreement which is the subject of the action in this case except for the federal question determined in respondent's favor, respondent is in the position of defending the view of the court below or losing in this court.

Respondent has urged before the State courts (R. 8), and with apparent success (R. 54), that this case arises under both the due process and the equal protection clauses of the Fourteenth Amendment. Respondent makes the same contention here.

That these clauses are not synonymous in their meaning or coextensive in the legal area they protect is settled by a decision of this Court that deserves to be quoted at length:

> . . . This brings us to consider the effect in this case of that provision of the Fourteenth Amendment which forbids any state to deny to any person the equal protection of the laws. The clause is associated in the Amendment with the due process clause and it is customary to consider them together. It may be that they overlap, that a violation of one may involve at times the violation of the other, but the spheres of protection they offer are not coterminous . . . But the framers and adopters of this Amendment were not content to depend on a mere minimum secured by the due process clause or upon the spirit of equality which might not be insisted on by local public opinion.

> They embodied that spirit in a specific guaranty . . . The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process . . . Truax v. Corrigan, 42 S. Ct. 124, 257 U. S. 312, 66 L. Ed. 254.

The "sphere of protection" specifically offered by the equal protection clause has been marked out by many other decisions of this Court to the effect that the clause is intended to secure and safeguard equality of right and of treatment against intentional and arbitrary discrimination by what may fairly said to be state action. That is the essence of Truax v. Corrigan, supra; Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, and Sunday Lake Iron Company v. Wakefield, 247 U. S. 350, 38 S. Ct. 495, 62 L. Ed. 1154.

Respondent claims that a money judgment against her for violation of the restrictive agreement (which said agreement is admittedly free at least as an executory matter from the stigma of unconstitutionality, Civil Rights Cases, 109 U. S. 3, 3 S. Ct. 18, 27 L. Ed. 835; Shelley v. Kramer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161) would deny her the equal protection of the laws. But in view of this Court's construction of this clause in the above and many other cases, there is no substance in this claim.

That the equal protection clause does protect individuals against classification by state power on the basis of race or color is too clear to be disputed. Harmon v. Tyler, 273 U. S. 668, 47 S. Ct. 471, 71 L. Ed. 831; Buchanan v. Warley, 245 U. S. 60, 38 S. Ct. 16, 62 L. Ed. 149; Richmond v. Deans, 281 U. S. 704, 50 S. Ct. 407, 74 L. Ed. 1128; Gaines v. Canada, 305 U. S. 337, 59 S. Ct. 232, 83 L. Ed. 208. But the protection offered is personal protection and the rights

protected are personal rights. Oyama v. California, 332 U. S. 633, 68 S. Ct. 269, 92 L. Ed. 249. Has **respondent** been classified or singled out by the California State courts on the basis of **respondent's** race or color? The plain fact is that respondent has been threatened with a money judgment against her, not because of her race or color, but because she signed the agreement in evidence and then violated her agreement to the damage of petitioners (R. 4, 5). That the State courts of California or any other state would, upon proper application, render a like judgment against any person "similarly situated", irrespective of his race or color, cannot be disputed by this Court. For a State court to affirm the right of an individual to collect damages against any signatory (of any race or color) upon breach of a restrictive agreement is not the "indiscriminate imposition of inequalities" condemned in the Shelley case. In other words, respondent is sought to be held liable, not by reason of the legal transcendentals of her race or color, but by reason of her overt act, the deliberate violation of a contract.

Once it is admitted that the basis of the proposed State court judgment is not respondent's race or color, the equal protection clause falls out of the case; for no right of **respondent** can be shown to be within its scope.

II.

Respondent Has No Standing in This Court to Protect or Assert the Rights of the Negro Occupants of the Real Property Concerned.

The negro occupants of the real property concerned are not parties to this suit. Nor are they represented here by counsel. No relief was asked against them in the Courts below. No relief is asked against them here. They are immune from attack both at law and in equity under the rule in the Shelley case. They **as persons** are not

and cannot be hurt or injured by either the decision of the State court or this Court, whatever that decision may be. Their title and possession is an accomplished fact which is beyond all State and Federal power to disturb. This case is moot as to them, and this Court does not sit to settle issues which events have put at rest. U. S. v. Alaska Steam Ship Company, 252 U. S. 572, 40 S. Ct. 448, 64 L. Ed. 808.

While this Court held in the Shelley case that State court action operating **directly** and **adversely** upon the personal rights of negro owners of restricted real property denied these negro owners the equal protection of the laws, it is clear that the Constitutional guaranties preserved to the negro minority may not be arrogated to her own defense by Respondent. In short, Respondent may not assert that State action is unconstitutional as to others if it is not unconstitutional as to her. Jeffrey Manufacturing Company v. Blagg, 235 U. S. 571, 35 S. Ct. 167, 59 L. Ed. 365; Erie Railroad v. Williams, 233 U. S. 685, 34 S. Ct. 761, 58 L. Ed. 1115. That there must be a causal connection between the State action complained of and the very personal right sought to be vindicated is an axiom known to many fields of law. That a Constitutional question is not exempt from the range and authority of this rule is the conclusion to be drawn from such decisions of this Court as Cronin v. Adams, 192 U. S. 108, 114; Hatch v. Reardon, 204 U. S. 152, 160; The Winnebago, 205 U. S. 354, 360; Standard Stock Food Co. v. Wright, 225 U. S. 540, 550; Hendrick v. Maryland, 235 U. S. 610, 621; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 289; Henneford v. Silas Mason Co., 300 U. S. 577, 581; Premier-Pabst Sales Co. v. Grosscup, 298 U. S. 226, 227.

Respondent in seeking to assert in this Court the possible claims of another may not "assume the role of actor"

so that there may be a ruling here under the equal protection clause of the Fourteenth Amendment. Doremus v. Hawthorne, 342 U. S. 429, 72 S. Ct. 394, 96 L. Ed. 310. Nor may Respondent call upon this Court to rule a point under circumstances that do not constitute a "case or controversy"; for the jurisdiction of this Court is cast in those terms. Doremus v. Hawthorne, supra. This Court does not sit as a corrective tribunal for the States in matters that are purely academic or in the air. For this Court's jurisdiction to attach, the facts must constitute the earthy stuff of which litigation is made. United Public Workers v. Mitchell, 330 U. S. 775, 67 S. Ct. 556, 91 L. Ed. 754; Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 56 S. Ct. 466, 80 L. Ed. 688; and cf. Adler v. Board of Education, 342 U. S. 485, 72 S. Ct. 380, 96 L. Ed. 295.

Even though the negro occupants were parties, they could not vex the judicial ear with complaints, because their property rights here have crystallized and stand forever beyond the reach of State power in all forms. They are hence merely members of a vague and ghostly group. Their rights are as tenuous as those of the taxpayers in Massachusetts v. Mellon, 262 U. S. 447, 43 S. Ct. 597, 67 L. Ed. 1078.

III.

A Money Judgment Granted Petitioners in the State Courts of California Would Not Deprive Respondent of Liberty or Property Without Due Process of Law.

Having concluded that the equal protection clause is not involved in this case, it is now necessary to determine Respondent's contention that a money judgment against her would deprive her of liberty or property without due process of law (R. 8). That the exercise of State judicial power may be measured by this Court against the require-

ments of the Fourteenth Amendment is admitted. Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673, 50 S. Ct. 86, 74 L. Ed. 1107; Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565; Standard Oil v. Missouri, 224 U. S. 270; Hansberry v. Lee, 311 U. S. 32. The contention was not made in the Shelley case and is not made here that the mere fact that a State court is acting unaided by Statute excepts the State from constitutional responsibility if the "rule of law" evolved in the court's judicial thinking is offensive to the Federal Constitution. But when does the State court "act" in the Constitutional sense? When does the due process clause attach, if at all?

Counsel who have written this brief argued in Respondent's main brief in the Shelley case (p. 23 et seq.) that the various progressive steps used by State courts in arriving at the conclusion condemned in the Shelley case should be examined separately, and, by a process of elimination, the guilty element should be clearly silhouetted by this Court and labeled with the badge of constitutional criminality. The argument presented then went like this:

Neither the majestic generalities of the Fourteenth Amendment nor the Federal Statutes enacted under its enabling clause can reach the restrictive covenants themselves, there being no State action up to this point. Slaughterhouse Cases, 16 Wall. (U. S.) 36, 21 L. Ed. 394; U. S. v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588; U. S. v. Harris, 106 U. S. 629, 1 S. Ct. 601, 27 L. Ed. 290; Ex parte Virginia, 100 U. S. 339. The mere filing of the suit by the individuals interested is similarly insulated against Constitutional objection. The **judgment** of a State court is not to be condemned per se, even though the judgment is State "action" of sorts; for the judgment is simply the conclusion that must logically be reached by a State court as a result of its judicial premises. Allis-Chalmers Co. v. U. S., 162 F. 679; Groton Bridge Co. v. Clark Pressed Brick

Co., 136 F. 27. That the judgment viewed in a vacuum is not the offending element can also be gleaned from this Court's reasoning in Tidal Oil Co. v. Flanagan, 263 U. S. 444, 44 S. Ct. 197, 68 L. Ed. 382. In the Tidal Oil case this Court made it clear that when a State Statute (which dictates the judgment) is questioned under the Contract Clause of the Constitution, the Statute itself (if violative at all) is the "State action" condemned and not the judgment of the State court which the guilty Statute compels. Respondents in the Shelley case then concluded that the only possible source of offense in State judicial action of the sort that occurs in these cases is the "rule of law" or the "internal law" of the particular State before the bar; for it is this "rule of law" or "common law interpretation" that is the controlling element, when no Statute is involved. This conclusion is buttressed by this Court's decision in Erie Railroad v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, in which State "law" evolved by judicial decision alone was announced as controlling doctrine before the District Courts of the United States in diversity cases. Respondents then concluded that Missouri had not by its judicial gyrations evolved any "rule of law" that prevented any negro from owning property simply because he was a negro. Such a rule, Respondents conceded, would have violated the Fourteenth Amendment, in that a State Statute or a city ordinance incorporating such a rule into legislative command would place a purely arbitrary and captious limitation upon a negro's right to buy real property from a willing seller; Respondents further conceded that a judicial decision to the same effect would be similarly offensive to the Constitution. Prudential Life Insurance Co. of America v. Cheek, 259 U. S. 30, 42 S. Ct. 516, 66 L. Ed. 1044. Respondents then pointed out that Missouri's rule was merely permissive of the private discrimination protected by the Civil Rights Cases and not mandatory of the public discrimination that was the result

of the Statute and ordinance in Harmon v. Tyler, and Buchanan v. Warley, supra.

This Court, after presumably giving consideration to this argument, stated that it had "no doubt that there has been State action in these cases in the full and complete sense of the phrase" and that "it is clear that but for the active intervention of the State Courts, supported by the full panoply of State power, petitioners would have been free to occupy the properties in question without restraint." While the Court did not state and these amici are still at a loss to know what phase of Missouri or Michigan State court "action" was offensive to the Fourteenth Amendment, Respondents and their counsel in the Shelley case and the amici filing this brief have concluded, after repeated discussion and careful consideration in the intervening years, that this Court's reasoning in the Shelley case may be fairly summarized as follows:

> It is true that no State may pass a legislative act forbidding negroes to own or occupy real property. Harmon v. Tyler, supra. It is true that no State court may by any method arrive at and apply a rule of decision to the same effect. Prudential Life Insurance Company of America v. Cheek, supra. It is true that restrictive covenants standing alone are no concern of the Fourteenth Amendment. Civil Rights Cases, supra. But it is further true that a State court judgment enforcing these covenants against a willing negro buyer and a willing white seller is predicated on a rule of law to the effect that a negro may not buy land if white people privately agree that he may not. This rule is not substantially different from the legislative act condemned in Harmon v. Tyler; for in the Harmon case this Court struck down an ordinance which permitted a negro to own property in a given area only if he could obtain the consent of the white residents of the area. Hence both in this case (this Court rea-

soned) and in the Harmon case, the negro's fee title was dependent on a situation which the negro had no hand in creating and could not necessarily control. In the Harmon case the negro might not be able to get the consents of the neighbors necessary to his title. In this case, the negro might not be able to obtain the consents of the contract signatories necessary to his title. Therefore (this Court concluded) the negro is being placed by the State courts in a position wherein he is helpless to help himself and this simply by reason of his race or color. Thus the Missouri and Michigan rule of law denies the negro the equal protection of the laws and the judgments of the Missouri and Michigan Courts based on such a rule of law must be reversed. (This, counsel respectfully submit, is the rationale of the Shelley case.)

All that remains is to apply the true rationale of the Shelley case in this case.

It is important to note that the Harmon and Buchanan cases were due process cases. These decisions declared invalid legislative acts that forbade sale of real property to negroes because such acts placed an arbitrary limitation on the control by the white owner of his own fee title. This was thought by the Court to constitute a confiscation by the State of a white owner's property right and hence a violation of the due process clause. It may be admitted that a rule of decision to the same effect would be similarly invalid.

Suppose (to go a step farther) that a white owner buys property which is encumbered by a pre-existing restrictive agreement against sale to negroes. Suppose, after violation by the white owner of the agreement, the white seller is subjected to a money judgment by one of the signatories to the original agreement. Here we have a situation that involves a State rule of law approaching in legal effect the

ordinance in the Harmon case. Just as in the Harmon case the "willing white seller" could not necessarily obtain the consents of the other residents essential to convey his property to the "willing negro buyer", so too in the hypothesized case the "willing white seller" could not necessarily obtain the consents of the signatories essential to successful conveyance to his "willing negro buyer".

In the Harmon case, the sale was made void by ordinance. In the supposed case, the sale could be made void by a court of equity applying a rule of law equivalent to the ordinance. In both cases, the white seller has without his consent been stripped by State action of the right to sell his property to whom he pleases and he is thus deprived of a property right without due process of law.

It must be concluded generally from all prior decisions of this Court that a willing seller of real property may claim violation by State action of due process only when the State (acting legislatively or judicially) forbids the proposed transfer without offering the seller an opportunity at some stage of the proceeding to have his say about the matter; for in the last analysis a legislative act is subject to control by the persons it seeks to bind only by way of the ballot box control over the officials who have enacted or propose to enact it. But the protection offered by such a right of control is too remote and uncertain to square with the demands of due process. If this were not true, a legislature could act without any constitutional responsibility whatever except insofar as the individual members thereof might be subject to the loss of office if the public thought they went too far. Similarly, a rule of property created by private agreement is subject to control only by those who originally called the agreement into being. A white buyer who takes the property subject to the agreement has no voice in its creation. He can only ask that the restrictions be not enforced against

him if he decides to sell to the unwanted minority. But this protection is also too tenuous to respond to the commands of due process. Hence it is fair to conclude that the white property owner may take refuge in the due process clause only when it appears that a State Court threatens to carry out to his detriment the Legislative will (over which he has no control) or the will of private individuals (over which he has no control). In either case he would be forbidden by State power to alienate his property as seems best to him.

Here, however, more appears. Respondent admittedly voluntarily signed the agreement in evidence and consented to be bound by its terms. Here, we do not have a legislature or a city council creating a law that binds her without her say. Nor do we here have a rule of property created by private action and enforced by a State court which seeks to bind Respondent without giving her a voice in the matter. Respondent was not bound or coerced by State power in any form to sign the agreement. Respondent by signing freely gave up her right to be the "willing white seller" of which the Shelley case makes much. Respondent had a direct hand in creating the very situation of which she now complains. She could have controlled her own property rights so as to be free from "State action" by refusing to sign the agreement. But she chose to sign it, and petitioners have elected not to permit her to change her mind.

The cardinal element of control, absent in the Shelley case, present in this case, makes the Shelley rule unavailable to Respondent here. She has not been deprived of property without due process of law.

IV.

Respondent Is Estopped to Assert That She Has Been Deprived of Rights Secured to Her by the Constitution.

That one who accepts the benefits of a law cannot be heard to complain of its burdens is well established constitutional doctrine. This rule has been frequently called into play against persons who attack statutes after having partaken of the advantages offered by them. United Fuel Gas Co. v. Kentucky Railroad Commission, 278 U. S. 300, 49 S. Ct. 150, 73 L. Ed. 390; Shepard v. Barron, 194 U. S. 553, 24 S. Ct. 737, 48 L. Ed. 1115. In the Shepard case, this Court refused to permit owners of real property to question the validity of an Ohio law laying down a method of land assessment for public improvement, when the owners themselves had petitioned for improvement under the law and had caused bonds to be issued on the strength of the law's validity. This Court used language not without application here:

> "Provisions of a constitutional nature intended for the protection of the property owner may be waived by him, not only by an instrument in writing, upon a good consideration, signed by him, but also by a course of conduct which shows an intention to waive such provisions, and where it would be unjust to others to permit it to be set up. Certainly, when action of this nature has been induced at the request and upon the instigation of an individual, he ought not to be thereafter permitted upon general principles of justice and equity to claim that the action which he has himself instigated and asked for and which has been taken upon the faith of his request, should be held invalid, and the expense thereof, which he ought to pay, transferred to others." 48 L. Ed. 1115, 1121.

Respondent signed the agreement in evidence in October of 1944, and enjoyed its benefits until February of 1950 (R. 2, 4). Respondent's signature on the agreement is conclusive evidence that Respondent was active in procuring the execution of the agreement. Respondent, after having enjoyed the fruits of the agreement that protected the value of her property, now wishes to walk out unscathed and transfer the monetary loss to the other signatories. Respondent's position is no different from a lobbyist or legislator who actively participates in the passage of an act and then seeks to use the Fourteenth Amendment as a locus poenitentiae when the act for which he is at least partly responsible no longer serves his personal ends.

While the Shepard case concerns a statute, the very theory of "state action" advanced here by Respondent should make the doctrine of the Shepard case applicable to the California "rule of law" which Respondent has here attacked.

V.

This Court Has No Authority to Decide State Public Policy.

These amici do not deem it amiss to point out that the validity and enforceability (absent a federal question) of the restrictive agreement in evidence are matters inexorably entwined in the public policy of the State of California. It is well settled that this Court will not and cannot substitute its judgment in such matters for the judgment of California. And to determine what the public policy of a State may be, this Court will be exclusively guided by the judicial pronouncements of the highest appellate Court of the State concerned or by the Constitution and Statutes of that State if its courts have not spoken on the particular subject of inquiry. This is the import of such cases as Griffin v. McCoach, 313 U. S.

498, 61 S. Ct. 1023, 85 L. Ed. 48; Wheeler v. Smith, 50 U. S. 55, 9 How. 55, 13 L. Ed. 44; Preston's Heirs v. Bowman, 19 U. S. 580, 6 Wheat. 580, 5 L. Ed. 336.

Here the high courts of California have provided this Court with an impressive array of decisions that conclusively dispel any notion that California finds restrictive agreements to be incongruent with the safety, morals or general well being of her residents. Los Angeles Investment Co. v. Gary, 81 Cal. 680; Janss Investment Co. v. Walden, 196 Cal. 753; Burkhardt v. Lofton, 63 Cal. App. 2d 230.

Similarly the fact that petitioners have suffered damages as a result of Respondent's breach of contract (R. 5, 6) is admitted by Respondent's demurrer and is conclusive for purposes of this Court's jurisdiction. Urie v. Thompson, 337 U. S. 163, 69 S. Ct. 1018, 93 L. Ed. 1282.

CONCLUSION.

While these amici do not feel that this Court reached the right conclusion in the Shelley case, they emphasize that this Court need not overrule nor limit the Shelley decision in order to prevent the Respondent in this case from perpetrating upon petitioners what these amici view as an outright fraud.

It is true, as has been suggested, that if the States are permitted to render many judgments upon proper application against one who has breached a restrictive agreement, the threat of such action may prove a deterrent to the sale of certain real property to members of a racial minority. But this argument misses the point. No person, white or negro, has any right protected by the Federal Constitution to **compel** sale to him of any particular piece of real estate. Corrigan v. Buckley, 271 U. S. 323, 46 S. Ct. 521, 70 L. Ed. 969. If a negro has received a deed to property or has an earnest money contract guaranteeing

conveyance to him of real property, his rights under such deed or contract cannot be disturbed by State power. But unless and until a prospective negro purchaser has from a prospective white seller some definite commitment recognized by law, the negro's legal position is no different from any other prospective buyer, white or negro. Until and unless the necessary legal connection (deed or contract) exists between the negro and his prospective white seller, the negro has no property or civil right that may enjoy a "preferred position" before this or any Court. Marsh v. Alabama, 326 U. S. 501, 66 S. Ct. 26, 90 L. Ed. 265. The fact that the white owner may be deterred from calling such a connection into being because he knows or suspects that he will be forced to pay damages caused thereby to others, merely furnishes a motive for his refusal to create such a connection. We have not yet come to the point, it is hoped, where an individual's reason for refusing to sell his real property to a willing buyer of any race, color or creed, can be made the subject of judicial investigation.

Wherefore, these amici curiae pray the Court to reverse the judgment of the District Court of Appeal of California and remand the cause to that Court for further proceedings in accord with the internal substantive law of that State.

Respectfully submitted,

WALTER H. POLLMANN,
GERALD L. SEEGERS,
706 Chestnut Street,
St. Louis 1, Missouri,
Attorneys for the Amici Curiae.

PAUL M. GERWITZ, JR.,
CHARLES A. LEE, JR.,
706 Chestnut Street,
St. Louis 1, Missouri,
Of Counsel.